

PROCACCI BROS. SALES CORP. : CIVIL ACTION
:
v. :
:
FOUR RIVERS PACKING CO., INC. : NO. 09-cv-04067-JF

In accordance with applicable regulations, this Court has held a trial *de novo* (non-jury), at which the administrative

record constituted most of the evidence, and the findings of fact of the Secretary are *prima facie* correct.

The decision appealed from is exceedingly thorough and complete, covering some 27 pages. Nothing which has been presented to this Court suffices to call into question the accuracy of the Secretary's factual findings and conclusions. I therefore have no hesitation in affirming the decision appealed from.

The undisputed evidence established (1) that, upon arrival of the carloads in Philadelphia, a significant percentage of the onions were rotting, but a significant percentage of the onions conformed to Four Rivers's warranties and were saleable; (2) that Procacci Bros. was put to some additional expense in sorting out the rotten onions and repackaging the good ones; and (3) that Procacci Bros. has not yet paid for any of the onions. The decision of the Secretary simply requires Procacci Bros. to pay for the good onions, at the contract price, after the re-packaging costs have been subtracted.

The principal thrust of Four Rivers's argument has been that the onions would not have rotted at all if the railroad company had provided adequate ventilation throughout the journey, hence Procacci Bros. should have sued the railroad for causing the diminution in value of the produce. But the railroad is not a party to these proceedings. Neither the Secretary nor this Court is authorized to decide issues involving the railroad; and nothing in the Secretary's decision stands as an obstacle to

possible imposition of ultimate liability upon the railroad in appropriate proceedings. This is, in short, a non-issue in the present case.

I therefore affirm the decision appealed from.

An Order follows.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PROCACCI BROS. SALES CORP.	:	CIVIL ACTION
	:	
v.	:	
	:	
FOUR RIVERS PACKING CO., INC.	:	NO. 09-cv-04067-JF

ORDER

AND NOW, this 1st day of April 2010, IT IS ORDERED:

That the decision and order of the Secretary of
Agriculture dated August 6, 2009, is AFFIRMED.

Any application for counsel fees or expenses in this
Court's proceeding must be filed within 20 days.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.